IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-27-10-2005

Coram:
The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition Nos. 32335 of 2002 and 29566 of 2004

and W.P.M.P.No. 47047 of 2002

W.P.No. 32335 of 2002
A. Obaidhullah

.. Petitioner.

Vs.

1. The State of Tamil Nadu,
   represented by the
   Secretary to Government,
   Home Department,
   Secretariat, Chennai-9.

2. The Tamil Nadu Administrative Tribunal,
   represented by its Registrar,
   City Civil Court Complex,
   Chennai-104.

.. Respondents.

W.P.No. 29566 of 2004
N. Manoharan.

.. Petitioner.

Vs.

1. The Secretary to Government,
   Home Department,
   Fort St. George,
   Chennai-9.

2. The Additional Director General of
   Prisons, Egmore, Chennai-8.

.. Respondents.

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Writ Petitions have been filed under Article 226 of the Constitution of India (i) for issuance a writ of certiorari to call for records pertaining to order dated 17-01-2002 made in Original Application No. 5664/92, conveyed in the common order dated 17-1-2002 in O.A.Nos. 5664/92 and O.A. 6921/1993 on the file of Tamil Nadu Administrative Tribunal, Chennai and to quash the same; and (ii) for issuance of a writ of Mandamus, directing the first respondent to drop disciplinary proceedings initiated agaisnt the petitioner pursuant to the Charge Memo dated 23-5-1990 issued by the first respondent in his Letter No. 45053/Service D/82-53 as done to the co-delinquents namely M.A. Khyum, P. Senthur Pandian and S. Mahalingam and consequently to treat the period of suspension from 5-6-1978 to 5-6-1981 as duty for all purposes and award all benefits as done to the co-delinquents namely M.A. Khyum, P. Senthur Pandian and S. Mahalingam.

Mr. K.V.Srinivasa Raghavan:- For petitioner in W.P.No. 32335/2002.

Mr.P.I.Thirumoorthy:- For petitioner in W.P.No.29566 of 2004.

Mr. E. Sampathkumar, Govt., Advocate:- For First Respondent in 32335/2002 and for the Respondents in W.P.No.29566/04

COMMON ORDER

(Order of Court was delivered by P. Sathasivam, J.,)

Aggrieved by common order dated 17-01-2002 made in O.A.No. 5664 of 1992 of Tamil Nadu Administrative Tribunal, Chennai, A. Obaidhullah has filed W.P.No. 32335 of 2002 for quashing of the said order.

2. One N. Manoharan has filed W.P.No. 29566 of 2004 seeking to issue a Writ of Mandamus directing the first respondent-Home Department, Government of Tamil Nadu to drop the disciplinary proceedings initiated against him pursuant to the charge memo dated 23-05-90 as done to the co-delinquents, namely, M.A. Khyum, P. Senthur Pandian and S. Mahalingam and consequently treat the period of suspension from 5-6-1978 to 5-6-1981 as duty for all purposes and award all benefits as done to the said co-delinquents.

3. The case of A. Obaidhullah is briefly stated hereunder:

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He served as Second Grade Warder from 11-11-1971 to 05-06-1978 and was under suspension from 6-6-1978 to 13-11-1981. After revocation of suspension, he worked as Second Grade Warder from 14-11-1981 to 10-6-1983, thereafter, as First Grade Warder between 11-6-1983 and 15-7-1998 and Chief Head Warder from 15-7-98 to 23-10-99. He was promoted as Assistant Jailer on 20-10-1999 and has been working as such. The State of Tamil Nadu appointed Hon'ble Mr. Justice M.M. Ismail as One Man Commission ("Commission" in short) to enquire into certain allegations of harassment and ill-treatment of political prisoners at Central Prison, Madras, during 1976-77. The Commission found certain officials and subordinates responsible for the alleged beatings of the detenus in the Central Prison, Madras. The petitioner was one among those indicted in the report. He was, therefore, placed under suspension by the Government in G.O.Ms.No. 1254 Home Department dated 5-6-1978, pending enquiry on the above allegations. The above suspension was revoked subsequently by the Government in G.O.Ms.No. 2598 Home Department dated 13-11-1981. He resumed duty on 14-11-1981. He has been given three promotions as First Grade Warder, Chief Head Warder and Assistant Jailor.

4. In G.O.Ms.No. 1249-Home Department dated 5-6-78, Thiru N. Natarajan, I.A.S., then Member, Board of Revenue, was appointed by the first respondent as Enquiry Officer for taking suitable action against the officials of the Prison Department responsible for their acts of omission and commission pointed out by the Commission. The Enquiry Officer issued to the petitioner a memorandum of charges dated 29-8-1978 under Rule 17 (b) of Tamil Nadu (Classification, Control and Appeal) Rules as he was one of the 3 warders indicted by the Commission. The petitioner submitted his reply to the charge memo and requested the enquiry officer to exonerate him from the charges. For over 12 years, the petitioner did not receive either from the first respondent or the Enquiry Officer any communication. While so, due to change of Government, the petitioner received a letter dated 5-12-90 on 21-12-90 from the first respondent. The said letter stated that, in supersession of the charge memo dated 29-8-78 framed and issued by Thiru R. Natarajan, I.A.S., a fresh charge was framed and issued under rule 17 (b) of CCA Rules. The petitioner submitted his representation dated 21-12-90. He requested copy of the Commission's report, however, no reply was received from the first respondent.

5. On 19-9-92, the petitioner received a copy of G.O.Ms.No. 1575, Home Department dated 8-9-92 stating that in the place of Thiru R. Natarajan, I.A.S., Thiru J.R. Ramanathan, I.A.S., was appointed as Enquiry Officer to conduct enquiry against the petitioner and 8 other officials of the Prisons Department. The Enquiry Officer required the petitioner to appear before him on 01-10-92. He appeared and submitted a representation on 1-10-92 wherein the petitioner referred to the order of the Tribunal dated

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6-8-92 in O.A.No. 4083/91 and pointed out that, in the circumstances mentioned in the said order and his representation the holding of enquiry was not sustainable in law. Without supply of the required documents as claimed earlier, the petitioner was asked to appear for enquiry on 18-11-92 and he also attended the enquiry. Meanwhile, he also came to know that one Chendoor Pandian, another charged official, who was then working as Additional Superintendent, Central Prison, Madras, filed O.A.No. 5295/92 and obtained an order of stay. Thereafter, based on the legal opinion, he filed O.A.No. 5664/92 before the Tribunal wherein he prayed quashing of the disciplinary proceedings pending against him. The Tribunal while admitting the O.A., granted stay of the disciplinary proceedings. He also brought to the notice of the Tribunal an order passed by the Tribunal in the case of S. Mahalingam, another grade II Warder dated 11-1-95 made in O.A.No. 5604/92. Accepting the said order, the Government dropped all the proceedings and the said official was paid full pay and allowances during the period of suspension. He also prayed similar order as passed in the case of S. Mahalingam. However, without considering all these aspects, by order dated 17-01-2002, a common order was passed, dismissing his Original Application along with O.A.No.6921/1993. Questioning the same, the said Obaidhullah has filed W.P.No. 32335/2002.

6. It is the case of N. Manoharan, petitioner in W.P.No. 29566/2004 that he is a Grade I Warder and working at Central Prison. He had 35 years of service in Prison Department. In respect of Emergency Excess, particularly in the Jail Department, the Government appointed Judicial Enquiry headed by Hon'ble Mr. Justice M.M. Ismail to enquire into the allegations of ill-treatment in Central Prison during the said period. The Commission submitted a report to the Government by including the petitioner in para 4 (56) and 7 (26). However, the Commission did not summon the petitioner for enquiry and nobody spoke about him in the enquiry. In spite of it, the Commission gave adverse findings based on the report of the Deputy Inspector General of Prisons-Mr. Muthu Venkatachalam. Accordingly, he was placed under suspension on 5-6-78. Subsequently a charge memo was issued through the Enquiry Officer, namely, R. Natarajan, I.A.S., on 29-8-1978 based on para 4 (56) and 7 (26) of Justice Ismail Commission report, stating that he had participated in beating the MISA Detenus in the presence of Superintendent, Jailor and Chief Head Warder and had a policy to beat the detenus whenever the chances were available and thereby resulted injuries to the detenus. Since the charges are vague and the same were issued based on the report without giving opportunity, he challenged the charge memo in the High Court in W.P.No. 4248/79. He also filed W.P.No. 4249/79 to quash the paragraphs 4 (56) and 7 (26) of the report dated 26-9-97. W.P.No. 4249/79 was dismissed, hence he filed Writ Appeal No. 14/80. Thereafter, both the Writ Appeal No.14/80 and W.P.No.4249/79 were

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taken together by the Division Bench and common final order was passed on 7-8-80 allowing both the writ appeal and writ petition. But, however it was observed that "This is without prejudice to the right of the respondents to initiate fresh proceedings, if charge levelled against the appellant could be established by other materials independent of the findings rendered in paragraphs 4 (56) and 7 (26) of the report". Based on the Division Bench order, the first respondent-Home Department, revoked the suspension dated 5-6-1978 in G.O.Ms.No. 1248, Home Department dated 5-6-1981. While so, after lapse of 10 years from the date of Division Bench judgment, the Government, Home Department, issued a fresh charge memo on 23-5-90 by way of Government letter without any difference of earlier charge memo dated 5-6-78. He submitted his explanation on 20-6-90. However, the first respondent appointed new enquiry officer namely J.R. Ramanathan on 8-9-92. The enquiry officer conducted the enquiry proceedings on several dates and after 28-10-92, the enquiry was not proceeded due to the retirement of J.R. Ramanathan and the same position is continuing till date. In the meanwhile, the then D.I.G., of Prison, namely, Mr. Muthu Venkatachalam also expired in the year 1980. Co-delinquents of Jailer M.A. Khyum challenged the fresh charge memo dated 25-5-90 in O.A.No. 4083/91 before the Tribunal and the same was allowed on 6-8-92 and the order of the Tribunal was implemented. Similarly, in the case of co-delinquent S. Mahalingam was also allowed by the Tribunal on 11-5-95. Based on the Tribunal order, the charges framed against the said Mahalingam were also dropped and consequently the period of suspension was treated as duty for all purposes. While so, when he made a request to regularise the period of suspension as duty, he was informed by the first respondent on 22-10-2002 through the 2nd respondent-Additional Director General of Prisons, Egmore, Chennai-8 that his claim will be considered only after final orders passed on the pending disciplinary proceedings. Thereafter, he made a request to the first respondent to regularise the suspension period from 5-6-78 to 5-6-81 and allow him to go on voluntary retirement besides finalising the disciplinary proceedings pending against him on 22-1-2004 and 12-3-2004, but his requests were rejected by the first respondent on 28-6-2004; in view of the fact that the Tamil Nadu Administrative Tribunal is not functional and having no other remedy, approached this Court in W.P.No. 29566/2004 for issuance of a writ of certiorarified mandamus under Article 226 of the Constitution of India.

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7. Heard Mr. K.V. Srinivasaraghavan, learned counsel for petitioner in W.P.No. 32335/2002; Mr. P.I. Thirumoorthy, learned counsel for petitioner in W.P.No. 29566/2004; and Mr. E. Sampathkumar, learned Government Advocate, for 1st respondent and respondents 1 and 2 respectively.

8. The points for consideration in these writ petitions are:

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i) Whether the second charge memos dated 5-12-90 and 23-5-90 served on the respective petitioners altogether in supersession of the earlier charge memos dated 29-8-78 and 29-8-78 respectively are sustainable?

ii) Whether the charge memo dated 5-12-90 in the case of A. Obaidhullah and another charge memo dated 23-5-90 in the case of N. Manoharan are to be quashed on ground of inordinate delay?

iii) The orders passed by the Tribunal in the cases of M.A. Khyum, S. Mahalingam and M. Senthur Pandian, similarly placed persons and orders of the Government accepting the same and implementing the Tribunal's order are applicable to the present writ petitioners?

9. It is not in dispute that on 12-5-77, the Government of Tamil Nadu appointed Ome Man Commission consisting of Mr. Justice M.M. Ismail under the provisions of Commission of Enquiry Act to enquire into allegations regarding the ill-treatment meted out to the prisoners in Central Prison, Madras between February, 1976 and February, 1977. The Commission after conducting enquiry, submitted a report in the year 1978. The Commission gave its findings to the effect that number of prisoners who were confined in the Central Prison between February, 1976 and February, 1977 who were detained under the Maintenance of Internal Security Act ("MISA" in short) were subjected to torture, ill-treatment, harassment and they were deprived of certain concessions, benefits to which they were entitled to as per the detention order passed under MISA. In the report, 7 officials of the Central Prison, Madras were indicated by the Commission and they are: (1) K. Vidyasagar, Superintendent, Central Prison, Madras; (2) M.A. Khyum, Jailor, Central Prison, Madras; (3) Chendoor Pandian, Assistant Jailor, Central Prison, Madras; (4) Suruli Rajan, Chief Head Warder, Central Prison, Madras; (5) Obaidhullah, Warder, Central Prison, Madras; (6) Mahalingam, Warder, Central Prison, Madras; and (7) Manoharan, Warder, Central Prison, Madras. The Commission itself has recommended disciplinary proceedings to be initiated against the officials concerned against whom evidence have been let in at the time of enquiry which was accepted by the Commission. Among those persons, we are concerned with the cases of A. Obaidhullah and N. Manoharan.

10. Now we shall consider the case of A. Obaidhullah. At the relevant time, he was working as a Grade II Warder, Central Prison, Madras. Based on the report of the Commission, the Government of Tamil Nadu, Home Department, in G.O.Ms.No. 1254 dated 5-6-78 placed him under suspension pending enquiry into the charges against him. A charge memo dated 29-8-78 was issued by one R. Natarajan, I.A.S., Enquiry Officer for lapses on the part of the petitioner as pointed out in the report of the Commission. On 13-

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11-1981 in G.O.Ms.No. 2598-Home Department, revoked the suspension and ordered reinstatement of the petitioner in service with immediate effect after obtaining remarks from the enquiry officer. Subsequently, on 10-6-1983, he was promoted as Grade I, Warder. While so, on 5-12-1990, fresh charge memo was issued to the petitioner by the Secretary to the Government, Home Department cancelling the first charge memo dated 29-8-78, issued by Thiru R. Natarajan, I.A.S., Enquiry Officer. A perusal of the second charge memo dated 5-12-90 shows that no reason was assigned for cancellation of first charge memo dated 29-8-78. However, once again, referring the very same report, particularly paragraphs 4 (55), 7 (26), 15 (2), 19 (1). He was asked to submit his explanation within a period of two weeks. On 21-12-90, he sent a letter to Home Secretary requesting supply of copy of Commission's report since the charge has been framed based on certain paragraphs of the said report. It is further seen that on 8-9-92, in supersession of orders in G.O.Ms.No. 1249 dated 5-6-78, G.O.Ms.No. 1575, Home Department dated 8-9-92 issued orders appointing Thiru J.R. Ramanathan, I.A.S., as Enquiry Officer to conduct enquiry against the petitioner and 6 other prison officials. On 24-9-92, the Enquiry Officer sent a notice to the petitioner to attend oral enquiry fixed on 1-10-92. In the enquiry on 1-10-92, the petitioner enclosed copy of the order of Tamil Nadu Administrative Tribunal ('Tribunal" in short) dated 6-8-92 made in O.A.No. 4083/91 filed by M.A. Khyum, the then Jailor and making a request to him to inform the Government about the non-maintainability of inquiry. However, he was asked to attend the enquiry on 27-10-92. On that date, the petitioner has also prayed for supply of Tamil copy of Commission's report and charge memo issued by Thiru R. Natarajan as well as his explanation to the charge memo. On 30-11-92 the petitioner filed O.A.No. 5664/92 before the Tribunal to quash the disciplinary proceedings including charge memo dated 5-12-90. The Tribunal has also granted stay of all further proceedings pursuant to letter dated 5-12-90 of the Home Department. In the meanwhile, on 15-7-98, he was promoted as Chief Head Warder and on 25-10-99 he was promoted as Assistant Jailor. On 17-1-2002 the Tribunal by a common order in O.A.Nos. 5664/92 and 6921/93 filed by the petitioner and one K. Vidyasagar respectively, dismissed both the Original Applications upholding the charge memo and directed to appoint another Inquiry Officer and get along with the enquiry after getting explanation from the petitioner. We have already mentioned that the second charge memo dated 5-12-90 does not contain any reason for cancellation of first charge memo dated 29-8-78. It is not the case of the department that new materials have been gathered and based on the same, the second charge memo dated 5-12-90 came to be issued. On the other hand, the very same charge based on the report of the Commission was reiterated in the fresh charge memo dated 5-12-90. The tribunal has overlooked the issuance of the second charge memo superseding the earlier charge memo without adequate reason which is fatal to the disciplinary

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proceedings. It is useful to refer a Constitution Bench judgment of the Supreme Court in K.R. Deb v. Collector of Excise, Shillong, reported in 1971 2 SCC 102. The main contention before the Supreme Court was that in the presence of two earlier reports, a third enquiry is not contemplated under Rule 15 of Central Civil Services (Classification, Control and Appeal) Rules, 1957. After considering the said Rule 15, the Supreme Court has held: (para 12)

> "12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9. "

In the light of the principles laid down in the Supreme Court decision, in the absence of any explanation for not pursuing the first charge memo and issuance of fresh charge memo after a period of 12 years cannot be sustained. Though this objection was raised before the Tribunal, the same was not properly appreciated. Though the Tribunal referred to the decision in STATE OF ANDHRA PRADESH v. N. RADHAKRISHNAN (JT 1998 (3) S.C. 123), as rightly pointed out by the learned counsel for the petitioner, the Tribunal has overlooked the conclusion of the Supreme Court that the delinquent can always challenge the second memo and rather even the first one on the ground of delay which he did. In other words, the petitioner did what the Apex Court has opined in the above sentence and he challenged in O.A.No. 5664/1992 the issuance of the second charge memo dated 5-12-90. We are satisfied that the Tribunal has made the above observation, namely, "no meaning in the applicant's contention" without application of mind. It is also relevant to note that exercising statutory power in the statutory provision in General Rule 39 (d) the authorities promoted the petitioner based on the overall service record. In the light of the above discussion, we accept the first contention raised by Mr. Srinivasaraghavan.

11. Coming to the delay in both the writ petitions, it is the claim of A. Obaidhullah, petitioner before the Tribunal that there had been inordinate delay on the part of the department/Government and in the absence of proper explanation or

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the delay had been caused at the instance of the petitioner himself, the charge memo cannot be proceeded. Though the Tribunal has referred to the fact that charge memos have been issued as early as on 5-6-78 in respect of the events that had taken place during February, 1976 and February, 1977 and absolutely there is no explanation at all for not pursuing the charge and the need for issuing a fresh charge memo on 5-12-90 i.e., after a period of 12 years. The Tribunal proceeded on the assumption that inasmuch as the enquiry was headed by a sitting Judge of the High Court and based on the findings of the Commission, charge memos had been framed, the same cannot be lightly ignored. We are unable to accept the said conclusion. In T.T. ANTONY v. STATE OF KERALA AND OTHERS, reported in J.T. 2001 (5) SC 440, the Honourable Supreme Court has held that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of law and having duty to act fairly it has endorsed to act upon it. The Court has further held that the duty of the police/investigating agency of the State is to act in accordance with the law of the land. The Courts civil or criminal are not bound by the report or findings of the Commission of inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law. The Tribunal failed to consider the said relevant fact while considering the delay.

12. As rightly pointed out by Mr.K.V. Srinivasaraghavan, the Tribunal by pointing out various writ petitions filed by one K. Vidyasagar, the then Superintendent, Central Prison, Madras, questioning the enquiry proceedings, ignored the claim of the petitioner-A. Obaidhullah and projected that the delay was caused only at his instance.

13. In STATE OF U.P. v. N. RADHAKISHAN, reported in (1998) 4 Supreme Court Cases 154, the following conclusion in para 19 is relevant:

> "It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The

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delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

After holding so, the Honourable Supreme Court finding that the respondent (delinquent) at any stage tried to obstruct or delay the enquiry proceedings, confirmed the order of the Tribunal in quashing the charge memo dated 31-7-1995. As observed by the Supreme Court, whether the delay has vitiated the disciplinary proceedings, the Court has to consider a) the nature of charge; b) its complexity; and c) on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. As pointed out by the Supreme Court, it is the duty of the Court to verify how much the disciplinary authority is serious in pursuing the charges against the delinquent. Though disciplinary proceedings should be allowed to take their course, as pointed out, undoubtedly, the delay defeats justice and causes prejudice to the charged officer.

14. In recent judgement in the case of P.V. MAHADEVAN v. MD. T.N. HOUSING BOARD, reported in 2005 Supreme Court Cases (L&S) 861, the Supreme Court after finding that there is inordinate delay of 10 years in initiating the departmental enquiry against the appellant P.V. Mahadevan, in the absence of explanation from his employer-Tamil Nadu Housing Board, concluded that allowing the Housing Board to proceed with the departmental proceedings at this distance of time would be very prejudicial to the appellant and consequently quashed the charge memo issued against him. While

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arriving such a conclusion, Their Lordships made a reference to N. Radhakrishnan's case (1998) 4 SCC 154 (cited supra). After considering the factual details and rival contentions, the Supreme Court has concluded that: (para 11)

> "11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

After holding so, the Supreme Court quashed the charge memo issued against the appellant and also directed settlement of all retiral benefits in accordance with law within 3 months from the date of the order.

15. Mr. K.V. Srinivasaraghavan has also brought to our notice a letter (Ms)No.1118/Per.N/87 dated 22-12-1987 issued by Personnel and Administrative Reforms Department, Government of Tamil Nadu to all the heads of departments how the disciplinary cases should be disposed of expeditiously and prescribed a revised time limit for disposal of disciplinary cases. A perusal of the communication shows that time limit has been prescribed for completion of investigation/enquiry at every stage, including report by the Director of Vigilance and Anti-Corruption etc. In the absence of explanation at all on the side of the Government, except change of Government then and there, we are of the view that the Tribunal ought to have accepted the case of the petitioner (A. Obaidhullah) and quashed the charge memo on the ground of unexplained inordinate delay.

16. Now we shall consider the case of N. Manoharan, writ petitioner in W.P.No. 29566/2004. At the relevant time, he was a Grade II Warder, Central Prison, Madras. Like others, he was

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also indicated by the Commission in the Commission's report [para 4 (56) and para 7 (26)]. It is his grievance that the Commission did not summon him for enquiry and nobody spoke about him before the enquiry. However, the Commission gave adverse findings before the Deputy Inspector General of Prisons, Mr. Muthu Venkatachalam. Accordingly, he was placed under suspension on 5-6-78 in G.O.Ms.No. 1256-Home Department on the ground that an enquiry into grave charges against him is pending. The said charge memo was challenged before this Court in W.P.No. 4248/1979. He also filed another writ petition in W.P.No. 4249/1979 to quash the paragraphs 4 (56) and 7 (26) of the Commission's report dated 26-9-1997. Though the said writ petition was dismissed by the learned Single Judge, he filed Writ Appeal No. 14 of 1980, the same was admitted and thereafter both the Writ Appeal No.14/1980 and W.P.No. 4248/1979 were taken together by the Division Bench and common order was passed on 7-8-1980 allowing both writ appeal and writ petition. An observation was made that the said order was passed without prejudice to the right of the respondents to initiate fresh proceedings, if, charge levelled against the appellant could be established by other materials independent of the findings rendered in paragraphs 4 (56) and 7 (26) of the report. Based on the Division Bench order, the secretary to the Government, Home Department revoked the suspension dated 5-6-1978 in G.O.Ms.No. 1248, Home Department dated 5-6-1981, however, in the same revocation order it is stated that orders as to the period of suspension undergone by N. Manoharan, Warder will be issued separately in due course. It is the grievance of the petitioner that no order was passed separately to regularise his suspension period with effect from 5-6-78 to 5-6-81. Instead of that, after lapse of 10 years from the date of Division Bench judgment, the first respondent issued the fresh charge memo on 23-5-1990 by way of Government letter without any difference of earlier charge memo dated 29-8-1978. This was not acceded to. Hence, he filed the present writ petition (W.P.No. 29566/2004). Inasmuch as the present charge memo is in verbatim to the earlier charge memo dated 29-8-78, and in the absence of any explanation by the Government as to the need of the second charge memo, we are of the view that, the reasons stated in the case of A. Obaidhullah (petitioner in W.P.No.32335/2002) are also applicable to N. Manoharan. Even on the ground of delay, the second charge memo is liable to be quashed. It is to be noted that the Division Bench, while allowing the Writ Appeal No.14/80 and Writ Petition No.4248/79, permitted the respondents to initiate fresh proceedings only on the basis of other materials, namely, independent of the findings rendered in paragraphs 4 (56) and 7 (26) of the Commission's report. A perusal of the second charge memo shows that there is no other independent material, except quoting references to the Commission's report. In such circumstances, we are of the view that all the points discussed and concluded in the case of A. Obaidhullah, petitioner in W.P.No.32335/2002 will apply to the case of N. Manoharan,

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petitioner in W.P.No.29566/2004.

17. Now we shall consider whether the Government is justified in proceeding with the charge memos in so far as the petitioners in the present cases, when in the case of similarly placed persons, the Government based on the orders of the Tribunal, revoked the suspension order and granting promotion etc. It is brought to our notice that one M.A. Khyum, who was a Jailor at the relevant time, filed O.A.No. 4083/91 before the very same Tribunal challenging the State Government's letter No.45053/SO.I.a/83-51-Home Department dated 25-5-80 and for quashing the disciplinary proceedings pending against him. The Tribunal by order dated 6-8-1992, after finding that though charge has been framed against him on 29-8-78, no progress had been made even after 12 years and only on 23-5-90, fresh charge memo was issued on the same set of facts, no reason had been given by the respondents as to what happened to the earlier charge memo, pendency of charge memo for more than 12 years is not warranted in the light of the settled principles of the Supreme Court and he was also allowed to retire in October, 1982, quashed the charge memo and allowed his application. The Tribunal has also directed the respondent-Government to regularise the services of the applicant from 6-11-75 with consequential service and monetary benefits. It is brought to our notice that the said order of the Tribunal in the case of M.A. Khyum has been implemented by the Government.

18. It is also brought to our notice that one S. Mahalingam, Grade II Warder, Central Prison, Chennai at the relevant time filed O.A.No. 5604/1992 questioning the charge memo and the disciplinary proceedings before the very same Tribunal. By order dated 11-01-1995, after hearing both parties, following the order in M.A. Khyum's case (O.A.No. 4083/1991 dated 6-8-1992) after finding that "there would be no justification to proceed with the charge memo against the applicant", quashed the charge memo and allowed his application. It is also brought to our notice that the said order relating to S. Mahalingam has been implemented by the Government by revoking the suspension order and granting him all service and monetary benefits.

19. One M. Senthur Pandian, Assistant Jailor, working at the relevant time in Central Prison, Chennai has filed O.A.No. 5298/1992 before the same Tribunal praying for quashing the disciplinary proceedings issued by the Government in letter No. 45033/Ser.D/82-52, dated 23-5-90. The Tribunal after finding the inordinate delay (12 years) and after referring to the orders passed in the case of M.A. Khyum and S. Mahalingam by the very same Tribunal, allowed the application of M. Senthur Pandian and quashed the disciplinary proceedings. The Tribunal has also directed the Government to regularise the suspension period undergone by him, treating the period of suspension as one of duty for all purposes,

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with consequential increase in pensionary benefits. It is also brought to our notice that the said order of the Tribunal has also been implemented by the Government.

20. In the case of S. Manoharan, Grade I, Jailor, the Division Bench in its order dated 7-8-80, has quashed the charge memo based on the Commission's report and no action was taken after a period of 10 years from the date of Division Bench judgment and even thereafter fresh charge memo was issued on 23-5-90 basing the earlier Commission's report, which cannot be proceeded with in the light of the order of the Division Bench. We have already referred to the orders passed by the Tribunal in the case of M.A. Khyum, S. Mahalingam, and M. Senthur Pandian, similarly placed officers of the Central Prison, Chennai and the orders of the Government implementing the decision of the Tribunal. In such circumstances, there cannot be any discrimination in the case of the present writ petitioners who also stand on the same footing as that of the others. Curiously only in the case of A. Obaidhullah, the very same Tribunal refused to accept the inordinate delay as well as the earlier orders passed in the case of other delinquents and implementation of the orders of the Tribunal by the Government. We are unable to accept the reasoning of the Tribunal. We are of the view that after bringing to the notice of the earlier orders of the very same Tribunal in respect of similarly placed persons in the very same department and the order of the Government implementing the decision of the Tribunal, the Tribunal ought to have accepted the reasoning, which is similar in nature to that in the case of A. Obaidhullah in order to maintain judicial decorum. The contrary conclusion arrived at by the Tribunal is opposed to the well known principles and the law laid down by the Supreme Court. Though we are conscious of the fact that justifiability of charges at the stage of initiating disciplinary proceedings cannot be possible, unless they were dealt with by a Court of law, in the light of abundant factual materials and legal position as discussed above, particularly inordinate unexplained delay, the decision of the Tribunal in the case of similarly placed persons, and the orders of the Government implementing the same, we are of the view that the petitioners cannot be discriminated and on the other hand, they are also entitled to get the same benefits and reliefs that had been granted to their co-delinquents, namely, M.A. Kyum, M. Senthur Pandian and S. Mahalingam.

21. In the light of our discussion, the order of the Tamil Nadu Administrative Tribunal, Chennai dated 17-01-2002 made in O.A.No. 5664 of 1992 is quashed, and W.P.No. 32335/2002 is allowed and the petitioner-A. Obaidhullah is entitled to all service and monetary benefits allowable in accordance with law. In the case of N. Manoharan his W.P.No. 29566/2004 is allowed and direction is issued to the first respondent, Home Department, Government of Taml nadu to drop the disciplinary proceedings

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initiated against him pursuant to the charge memo dated 23-5-90 and treat the period of suspension from 5-6-1978 to 5-6-1981 as duty for all purposes. He is also entitled to all benefits that had been granted to the co-delinquents, namely, M.A. Khyum, P. Senthur Pandian and S. Mahalingam as per Rules. Both the Writ Petitions are allowed on the above terms. No costs. Connected W.P.M.P. is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

R.B.

To

1. The Secretary to Government,
   Home Department,
   Secretariat, Chennai-600 009.

2. The Registrar,
   The Tamil Nadu Administrative Tribunal,
   City Civil Court Complex,
   Chennai-600 104.

3. The Additional Director General of
   Prisons, Egmore, Chennai-8.

1 cc to Mr.K.V. Srinivasaraghavan, Advocate, SR. 43536
1 cc to M/s. P.I. Thirumoorthy, Advocate, SR. 43713

W.P.Nos.32335/2002 and
29566/2004 and WPMP
No. 47047/2002.

TEJ (CO)
kk 28/10

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